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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/598,852	06/20/2000	Kenneth H. Mollenauer	212/262	7145

23371 7590 10/24/2002

CROCKETT & CROCKETT  
24012 CALLE DE LA PLATA  
SUITE 400  
LAGUNA HILLS, CA 92653

EXAMINER

THANH, LOAN H

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 10/24/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/598,852

Applicant(s)

MOLLENAUER, KENNETH H.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,9-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 01 February 0715 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

The drawing objections have been withdrawn in view of the proposed drawings filed with the amendment on 07/15/02.

The specification objection has been withdrawn in view of the amendment filed 07/15/02.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Swartz et al. (U.S. Patent No. 5,938,660).

See figs. 2-7 Swartz et al. disclose a device having a catheter body, a first balloon and second balloon, a heating element (30), a suction lumen having a suction

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port (28), Swartz et al. further disclose different sources of energy used for catheter ablation such as direct current and radiofrequency energy.

Claims 1-5,9-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Ramsey, III ( 6,148,222).

Ramsey, III discloses a device having a catheter body, a first and second balloon located at the distal end of the catheter, a first and second heating element (20) and wires ( 19). See figures 1- 7 . Specifically , fig. 5 shows a plurality of balloons, plurality of suction lumens and plurality of heating element and wires.

See fig. 6 and 7 at heating elements ( 20 a and 20b).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 102(e) as anticipated by Swartz et al. (U.S. Patent No. 5,983,660) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Swartz et al. in view of Laufer et al. ( U.S. Patent No. 6,283,989).

Swartz et al. discloses the invention as substantially claimed. See above. It is inherent that the electrode is connected through wires to the RF energy source. If applicant is not convinced that there is/are wires connected to the supply source to power the heating elements then it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the electrode as taught by Laufer et

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al. (U.S. Patent No. 6,283,989). Laufer teaches electrodes for delivering heat from RF energy supply.

### ***Response to Arguments***

Applicant's arguments filed 07/15/02 have been fully considered but they are not persuasive. With respect to the arguments on page 5-6 of the amendment, the Examiner is not convinced by applicant's arguments. Examiner's position is that the structure as claimed is present. With respect to the intended use of the device, the prior art is capable of performing the function. Applicant has claimed a suction lumen communicating with the distal end of the catheter body. The Examiner has a lumen which communicates to the distal end of the catheter body. The intended is of the imposes no limitation to the claim in the absence of distinguishing features. The Examiner has considered the limitation and has not ignored the limitation. It has been treated as intended use. Further it would be capable of performing the function were a suction was applied through the lumen.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (703) 305-0038. The examiner can normally be reached on Monday to alternating Fridays (7:00 am-4:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
LoAn H. Thanh  
Examiner  
Art Unit 3763

LT  
October 21, 2002

  
MICHAEL J. HAYES  
PRIMARY EXAMINER